

AMDI3-165
4/6/07

Jessie White

From: Jim Scholl [jim_scholl@dot.state.ak.us]
Sent: Monday, April 09, 2007 8:21 AM
To: 'Jessie White'
Subject: FW: Shepard Point STIP comments

Jessie, log this in as a comment. Thanks!

From: Gabriel Scott [mailto:gscott@cascwild.org]
Sent: Friday, April 06, 2007 5:22 PM
To: DOT_STIP@dot.state.ak.us
Cc: Josh Laughlin; Jay Lininger; Jennifer Gibbons; Dune Lankard; Justin Massey; Dan Kruse
Subject: Shepard Point STIP comments

(hardcopy is in the mail)

STIP Comments
Division of Program Development
Alaska Dep't of Transportation and Public Facilities
POB 112500
Juneau, AK 99811-2500

To Whom It May Concern:

Please consider these comments, submitted on behalf of Cascadia Wildlands Project, ---and myself as an individual, regarding the Draft Amendment 13 (Major) to the 2006-09 STIP. They are specifically directed at the Shepard Point Road, Need ID #6617, in the Northern region at Cordova. The project is to "construct approximately 4 miles [sic] of road from Orca Cannery to the deep water port site at Shepard Point." This apparently is the same project as the "Cordova Oil Spill Response Facility Project," a BIA proposed project currently in the final NEPA decision-making phase, which would build the Shepard Point Road and a deep water port for the purpose of pre-staging oil spill response equipment.[1][1] The Draft STIP shows \$5,000,000 allocated to the "Construction" phase of "approximately 4 miles of road from Orca Cannery to the deep water port site at Shepard Point", in 2007. \$4,548,500 of the funds are listed as STIP, and \$451,500 from CM. It is ranked with a PEB score of 199. The City of Cordova is the sponsor. There are many problems with this entry, including:

- **Exposes state to hidden, long-term financial liabilities**
- **Major, long-standing permitting problems**
- **Intense public controversy**
- **Public Safety liability (avalanche & debris flows)**
- **No established use or need (Road to Nowhere)**

Our members and staff are residents and have a large variety of direct interests in the impacted area. After years of lengthy review, we have concluded that long-term interests in local quality of life, oil spill response, environmental protection and public safety are threatened by the proposed road. We also feel all project advantages can be affordably and efficiently accomplished by construction of the oil

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spill response facility at an alternative location.[2][2]

We are writing to ask that you **remove the Shepard Point Road from the STIP, and instead make that money available to construct the facility at one of the identified alternative locations.**

1. The project is not properly classified under 17 AAC 05.170(d).

The STIP classifies the Shepard Point road as a Community Transportation Program rural and urban street. But according to the regulation, “Projects in the Community Transportation Program include surface transportation facilities of local or regional significance that are **owned by the state or its political subdivisions...**”[3][3] The Shepard Point road would be owned by the Native Village of Eyak. [4][4] NVE is a federally recognized sovereign tribe[5][5], in no sense a subdivision of the state of Alaska. The road and port site are entirely on private land owned by NVE for-profit sisters The Eyak Corporation and Chugach Alaska Corporation. It is a private road on private land for private gain, and it belongs in the private sector.

Not only does the state not own this project, it is being expected to give up lease and/or ownership rights to extensive state tidelands.

2. This project does not have a reasonable chance of success, given lack of funding, permitting problems, and many other factors.

This project has been listed on STIPs and other transportation priority lists since the early 1990s, but has never come to fruition for very good reasons. The proposed road runs through a gauntlet of avalanche chutes.[6][6]

The purported purpose of the project is oil spill response, yet the “port site” the road is designed to access is uniquely ill suited to that task. It would actually slow down oil spill response, which is why responsible oil spill response organizations have refused to endorse it.[7][7] Furthermore, the project as proposed cannot be permitted under the Clean Water Act, section 404(b)(1) guidelines. The US Army Corps of Engineers comment letter has indicated:

“we do not find the information provided in the FEIS sufficient to conclude the BIA preferred alternative is the LEDPA (least environmentally damaging practicable alternative). A permit decision favorable to the BIA preferred alternative would not be possible unless the preferred alternative is clearly the LEDPA...Based on our review of the information provided in the FEIS, alternative 3B (Fleming Point, pile supported dock) appears to be the LEDPA.”[8][8]

This short, rarely used, dead-end section of road would be incredibly costly to maintain[9][9], and there are huge funding shortfalls on construction[10][10]. In fact, these funding issues warrant careful scrutiny on their own. This project is a classic boondoggle and money trap.

	Project Funding	Funding Required
STIP (FHWA)	\$5,000	
EVOS	\$10,000	
BIA	\$3,000	
Total Available Funds	\$18,000	
Needed Construction \$		\$30,700,000-\$39,700,000
Shortfall	\$12,700,000-\$21,700,000	

Project funding needs are misrepresented in the 2006-2009 STIP Draft. Under *17 AAC 05.165 GENERAL REQUIREMENTS FOR THE STIP*, subsection (c) reads:

“For each project, or an identified phase of a project, the department will state the
*(1) estimated **total project cost**; the total project cost may extend beyond the*
three years of the STIP;
(2) state, federal, and other financing that is available for the project; and
~~*The financing picture is not reflected in the STIP, a violation of this regulation.*~~
(3) amount of financing proposed for obligation during each program year for
the project or phase.

With regard to §(1), the listed \$5,000,000 total cost is only a very small fraction of the project. The *minimum* estimated needed cost for construction of BIA's preferred alternative is \$30,700,000. Even without the port construction costs (none of which have been secured), the road alone is estimated to cost at least \$19.6 million.[11][11] Please explain the purpose for only listing \$5,000,000. It appears to be a misrepresentation.

With regard to 17 AAC 05.165 (c) (2), the STIP does not offer a true funding picture for the project. The true situation, according to public information from BIA's Final EIS, is that even with generous donations, Exxon Valdez settlement, and BIA money, available funds are far short of needed project funding. It also fails to reflect that there is no money for the port portion of the project.

Even this massive shortfall doesn't tell the whole story. With regard to 17 AAC 05.165 (c) (3), the STIP only reflects funds for FFY07. Construction is not likely to start this year, as a Record of Decision has not been released, and there is not even a completed application submitted yet for the needed Corps of Engineers Clean Water Act §404(b)(1) permit. Even aside from permitting delays, construction will necessarily be a multi-year project. Unreflected in the STIP are those multi-year construction costs. Also unreflected are likely cost overruns when the avalanche danger is mitigated. None of the project funding identified to date can be used for construction of the port site, or purchase of any actual oil spill response equipment. It would be a Road to Nowhere, unless someone (the state) ponies up for a multi-million dollar dock. Also, the long-term maintenance costs of the road are hidden. Those are estimated at between \$467,000 and \$586,000 each year. No source of funds has been identified for that. The Native Village of Eyak would be responsible, but they have no source of income. No likely income or customer has been identified to use the road or port, to support these expenses. **By making this a state project, the STIP is exposing the state to a long-term financial liability that is not in the state's best interest.** ~~Another good point. Might want to put this and the good point above in the initial summary.~~

While the City of Cordova is listed as the sponsor, they have not committed anything to the project. To the contrary, the City long-ago abandoned the project because it was unfeasible. The City Council explicitly declined to consider the new information from BIA's NEPA process. It is purely a pro forma political sponsorship, not an expression of authentic community need or actual commitment by the City to commit anything or assume any responsibility.

3. Shepard Point Road fails to meet planning objectives

The score for this project is suspect, given our understanding of this project. This project is not a high priority, and to the contrary could be very damaging. The project is highly controversial and there is not community consensus on the need.[12][12]

17 AAC 05.125. STATEWIDE TRANSPORTATION PLANNING OBJECTIVES. (a) In the statewide transportation planning process, the department will consider goals and objectives that will further

(1) the economic vitality of the state;

As indicated, the project is a boondoggle on many levels. Very large public liability is matched only by a handful of permanent jobs. These same economic benefits, and more, could be achieved at an Alternative location.

(2) the safety and security of users of the state's transportation system;

The proposed road has extreme avalanche risk.[13][13] Worse, recommended mitigation measures do not appear to be being implemented. To save money, and cut down on needed fill, the road alignment remains inland, where it is exposed to several huge avalanche chutes. Public and expert comments clearly indicate this road would be a serious public safety hazard. By endorsing it, the state is exposing users to avoidable and serious dangers.

(3) accessibility and mobility options available to people and for freight;

The Shepard Point road does not provide us with anything significant that we don't already have. The road would only offer access to a small amount of undeveloped land, perched along the shore at the bottom of precipitous mountains. Without a port (for which there is *no* funding) the road provides very limited benefits. It only accesses private land, owned by the Eyak Corporation and Chugach Alaska Corporation. If this land was very developable, Eyak could easily have built itself a road.

(4) the integration and connectivity of various modes of the state's transportation system;

The Shepard Point road is supposedly to a deep-water port, but there actually is no project money identified to build any. It is a road to nowhere. The existing state ferries, city fuel transfer, and spill response positioning is at the just-renovated Ocean Dock. The in-town alternative locations much better serve connectivity of the state transportation system. Shepard Point road only provides access to a private port, and small amount of private land.

(5) the preservation of existing transportation systems; and

By stretching maintenance money thin, this project will compete for funding with preservation of the existing transportation system.

(6) any metropolitan area plan developed under 23 U.S.C. 134 and 49 U.S.C. 5303-5306.

The City of Cordova is listed as project sponsor. For the other permitting decisions, the Native Village of Eyak is sponsor, and will be road owner/operator. This project is listed as an important priority for NVE

(b) When formulating its goals and objectives in the statewide transportation plan, and the strategies to implement those goals and objectives, the department will consider the concerns of interested persons and minimize any adverse environmental, economic, or social impact of those goals and objectives upon any segment of the population.

The best you can say about this proposal is that it's controversial. The Exhibits show a fair representation of the many interests that would be damaged by building a Shepard Point Road. Economic concerns are major, as the project is a boondoggle with little economic benefit, in return for major long-term economic liability. In past economic environments this project may have penciled out, but today there is no identified source of income for the port. Social impacts of the road are demonstrated by the substantial controversy evident in Final EIS, and recent media coverage. Among the environmental concerns are special aquatic habitats, salmon streams, old-growth rainforest, and cumulative impacts encompassing the world-class Copper River Delta, and nationally recognized Rude River.

5. Shepard Point Road scores low on the needs list and should be

evaluated with a score that is adjusted to consider project problems.

17 AAC 05.175. PROJECT NEEDS LIST AND EVALUATION.

(b) For rural and urban streets projects classified under 17 AAC 05.170(d) (Community Transportation Program), the evaluation criteria are

(1) economic benefits resulting from the project;

There are few economic benefits resulting from this project, and there are much greater economic liabilities for the state.

(2) the project's effect upon health and quality of life;

The project would have a negative impact on health and quality of life. In the words on one Eyak leader, "this project would forever threaten our way of life."

(3) whether the project enhances the safety of the traveling public;

Avalanches, debris flows and wind dangers associated with the port have been identified as a clear threats to public safety.

(4) whether the project improves intermodal transportation or lessens redundant facilities;

The Shepard Point Road is redundant with existing docks in the Cordova area. While it could potentially be a unique conduit for deep draft vessels, no customers have been identified as likely to use the port, despite years of trying. There are no deep draft spill response vessels.

(5) whether a municipality, another state agency, or a federal agency has made a contribution to finance capital costs;

The Bureau of Indian Affairs and FHWA are federal agencies making contributions to this project. The state also is contributing, through nearly \$10 million in settlement money from the Exxon *Valdez*.

(6) whether a municipality, another state agency, or a federal agency has made a commitment to assume ownership or to finance maintenance and operations costs;

This condition is not met. Ownership will be assumed by Native Village of Eyak, a tribal government, but they have not made a commitment to finance maintenance or operations costs.

(7) whether the project will lower state maintenance and operation costs;

To the contrary, the facility can only add to state maintenance and operations costs. Over a quarter-million dollars a year would be necessary just to keep the road open.

(8) environmental approval readiness;

As evident in Exhibit A, a Clean Water Act permit for the Shepard Point road is impossible given the extensive available evidence. A Record of Decision could be issued any time, but without CWA permits the road cannot be built.

(9) whether the project involves only surface rehabilitation;

(10) evaluation of cost, length, and the existing roadway's average annual daily traffic count;

The traffic analysis for the Shepard Point road shows very slight traffic for the proposed road. The most traffic expected to ever use it—on the first day of a massive oil spill—would be 67 vehicles. That is an absolute worst case scenario, calculated odds of less than once in every 300 years. [LE1] [LE1] More routinely the road will serve only a few maintenance crew, and the odd townspeople running their dog. Since it dead-ends on a tiny spit of private land, there are precious few reasons to go there. It ~~and~~ presents safety hazard from avalanches and rockslides, so there are at least a few reasons to avoid it.

(11) whether the project replaces deficient bridges;

It does not.

(12) whether the project corrects deficient roadway width, grade, or alignment;

If anything the project will *create* deficiencies. In an effort to shave costs, already the project has 10% grades and a single-lane width. If use for the deepwater port ever were found, it is probable this road would need to be upgraded.

(13) the functional classification of the project;

As indicated above, the project cannot be classified as a Community Project road or street. As proposed the project does not appear to fall under any of the other classifications, either. It is a private road. The STIP lists the “Predominant Functional Class” as “unclassified.” Again, the actual function or use of this road is highly uncertain, and entirely out of the state’s control.

(14) the degree to which the project exhibits innovation in the manner in which it addresses the project's challenges; and

There have been some innovations in minimizing fill and avoiding avalanches. But many of those

innovations are not being implemented. The obvious, critical problem with the proposal is the location, in massive natural avalanche chutes. In nearly 20 years of studying and planning, no cost-effective way has been discovered to substantially mitigate this threat. The only two options are moving the road out to sea, around the avalanche base, or extensive avalanche controls upslope. Either option would run into the hundreds of millions of dollars. Even project contractors considered that clearly not justified by the scant traffic envisioned on the road.

(15) the degree of public support.

As indicated by Exhibits, this project does not have the public support. There are lots of things we all agree on. This is not one of them.

Thanks for considering these comments. Please keep us informed of any updates to the STIP concerning this project.

Sincerely,

Gabriel Scott
Alaska Field Representative
Cascadia Wildlands Project

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cc.

Governor Sarah Palin
Senator Lisa Murkowski

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Attachments:

Exhibit A—Corps of Engineers comments on Final EIS
Exhibit B—*Cordova Times* coverage, letters to the editor
Exhibit C—*Anchorage Daily News* coverage
Exhibit D—Shepard Point Avalanche Hazard
Exhibit E—Resolution 2006-9-2, Cordova District Fishermen United
Exhibit F—Comment letter, Alaska Citizens for the Chugach.
Exhibit G—Comment letter, Cascadia Wildlands Project
Exhibit H—Comment letter, Trustees for Alaska
Exhibit I—NVE/BIA Agreement

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The Cascadia Wildlands Project is dedicated to defending the forests, waters, and wildlife of the Cascadia bioregion. Become a member today at <http://cascwild.org>. Your support makes a difference!

[1][1] Extensive information is available at www.cordovaresponsefacility.com

[2][2] There are several excellent alternatives available. We recommend Ocean Dock, although Fleming Point and Orca Cannery also have merit. *See* Exhibits A, B and C; *see also* Alternatives 2, 3 and 5 in the Final EIS, available on the project website.

[3][3] 17 AAC 05.170(d)

[4][4] 2002 MOU between BIA, NVE (Exhibit I). "Under the 2002 BIA-NVE Agreement, NVE would own and operate the road and oil spill response dock facility" Cordova Oil Spill Response Facility Final Environmental Impact Statement, 2006, p.4-53; *see also* at Appendix S, p.22. The entire Final EIS with appendixes is available for download at:

<http://www.cordovaresponsefacility.com/>, and online viewing at <http://www.cordovaresponsefacility.com/documents/feis/TOC.pdf>

[5][5] <http://www.chugachmiut.org/tribes/eyak.html>

[6][6] Fesler 2005 "Avalanche Hazard Evaluation and Mitigation Recommendations for the Proposed Cordova Oil Spill Response Facility." Available online as Final EIS Appendix I at <http://www.cordovaresponsefacility.com/>

[7][7] *See* Exhibit E: CDFU Resolution

[8][8] *see* Exhibit A: Glen Justis, East Branch Chief, USACE, 1/26/2007 letter to Kristin K'ait, BIA. This view has also been expressed in writing by the Deputy Assistant Secretary of the Army, to the Associate Deputy Secretary of the Interior, in a November 20, 2005 letter. Contact at the Corps is Brian Herczeg, (800) 478-2712, bryan.a.herczeg@poa02.usace.army.mil

[9][9] Estimated minimum \$514,000/ yr. Final EIS at 4-18.

[10][10] At least 12.6 million. Bureau of Indian Affairs 2006 "Cordova Oil Spill Response Facility Final Environmental Impact Statement" at

[11][11] BIA 2006 p.4-18

[12][12] *See* Exhibits

[13][13] *See* Fesler 2005; and Exhibit D.

[LE1]